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ZEFEA SAMSON

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BIKRAM'S YOGA COLLEGE OF
INDIA, L.P., a California limited
partnership; and BIKRAM
CHOUDHURY, an individual,

Plaintiffs,

v.

EVOLUTION YOGA, LLC, a New
York limited liability company;
MARK DROST, an individual;
ZEFEA SAMSON, an individual;
and DOES 1 through 10, inclusive,

Defendants.

AND RELATED
COUNTERCLAIMS.

Case No. CV 11-05506-ODW (SSx)

**STIPULATION TO DISMISS
ACTION WITH PREJUDICE
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE
41(a)(1)(A)(ii) AND PROPOSED
ORDER**

The Honorable Otis D. Wright II

STIPULATION TO DISMISS ACTION WITH PREJUDICE

Plaintiffs and Counter-Defendants Bikram's Yoga College of India, L.P. and Bikram Choudhury (collectively "Plaintiffs") and Defendants and Counter-Claimants Evolation Yoga, LLC, Mark Drost, and Zefea Samson (collectively "Defendants"), by and through their respective counsel of record, hereby enter into this Stipulation to Dismiss Action with Prejudice Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii):

WHEREAS, on July 1, 2011, the Plaintiffs commenced this action by filing a Complaint in the United States District Court for the Central District of California against the Defendants alleging claims for (1) Copyright Infringement; (2) Trademark Infringement; (3) False Designation of Origin; (4) Dilution; (5) Unfair Competition; (6) Unfair Business Practices; (7) Breach of Contract; and (8) Inducing Breach of Contract (the "Action").

WHEREAS, Plaintiffs claimed, among other things, that the Defendants infringed Plaintiffs' copyright in a sequence of 26 yoga postures and 2 breathing exercises (the "Sequence").

WHEREAS, on February 20, 2012, the Defendants filed an Answer to the Complaint and Counterclaims for Declaratory Judgment in the Action.

WHEREAS, on November 12, 2012, the Defendants filed a Motion for Partial Summary Judgment on a portion of Plaintiffs' claim for copyright infringement and on Defendants' First Counterclaim, arguing that Defendants are not infringing on a valid copyright in the Sequence.

WHEREAS, on December 14, 2012, this District Court issued an Order Granting the Defendants' Motion for Partial Summary Judgment ("Order for Partial Summary Judgment").

WHEREAS, on April 2, 2013, the Plaintiffs and the Defendants entered into a Settlement Agreement and Mutual Release (the "Settlement Agreement").

WHEREAS, in the Settlement Agreement the parties agreed to dismiss with

1 prejudice all claims and counterclaims that were not resolved by the Order for
2 Partial Summary Judgment.

3 WHEREAS, in the Settlement Agreement Plaintiffs expressly reserved the
4 right to appeal the Order for Partial Summary Judgment to the United States Court
5 of Appeals for the Ninth Circuit.

6 WHEREAS, Plaintiffs intend to file a Notice of Appeal and pursue an appeal
7 of the Order for Partial Summary Judgment before the United States Court of
8 Appeals for the Ninth Circuit.

9 WHEREAS, pursuant to and in accordance with the terms and conditions of
10 Article I of the Settlement Agreement, the parties to this Action stipulate to dismiss
11 the remainder of the Action with prejudice, subject to Plaintiffs right of appeal.
12

13 NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

- 14 1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and in
15 accordance with the Parties' Settlement Agreement to dismiss with prejudice all
16 claims and counterclaims not resolved by the Order for Partial Summary Judgment,
17 the remainder of this Action is dismissed with prejudice effective April 4, 2013.
- 18 2. Plaintiffs have not waived any right of appeal with respect to the Order for
19 Partial Summary Judgment.
- 20 3. Each party shall bear its own costs of suit and attorneys' fees incurred herein,
21 except as otherwise stated in the Settlement Agreement.
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1 Dated: April 4, 2013

2 DANIEL M. PETROCELLI
3 CARLA J. CHRISTOFFERSON
4 O'MELVENY & MYERS LLP

5 By: /s/ Daniel M. Petrocelli
6 Daniel M. Petrocelli
7 Attorneys for Plaintiffs and Counter-
8 Defendants, Bikram's Yoga College of
9 India, L.P. and Bikram Choudhury

10 Dated: April 4, 2013

11 ERIC R. MAIER
12 LOUIS E. SHOCH
13 MAIER SHOCH LLP

14 By: /s/ Eric R. Maier
15 Eric R. Maier
16 Attorneys for Defendants and
17 Counterclaimants Evolation Yoga, LLC,
18 Mark Drost, and Zefea Samson

19
20 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

21 this ____ day of _____, 2013

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24 Honorable Otis D. Wright, II
25 United States District Judge
26 Central District of California
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ECF CERTIFICATION

The filing attorney attests that he has obtained concurrence and authorization regarding the filing of the document from the signatories to this document.

Dated: April 4, 2013

DANIEL M. PETROCELLI
CARLA J. CHRISTOFFERSON
O'MELVENY & MYERS LLP

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